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December 15, 2003

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Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W. Room TW-A325
Washington, DC 20054

RE: Telecommunications Relay Service, CG Docket No. 03-123

Dear Madam Secretary:

As Chairperson of the FCC's Consumer Advisory Committee, attached please find four copies of the recommendations of the Committee concerning Telecommunications Relay Service as adopted November 20, 2003. We believe that these recommendations are relevant in the above-captioned proceeding. This is an Ex Parte communication filed pursuant to Sec. 1.1206 of the Commission's rules.

Sincerely,

Shirley L. Rooker, Chairperson
Consumer advisory committee

cc: Chairman Michael K. Powell

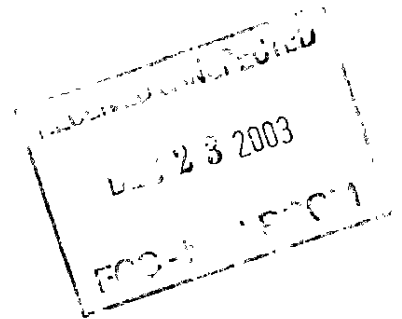
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Enclosure

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**Recommendations of the Consumer Advisory Committee
To the Federal Communications Commission
Regarding Telecommunications Relay Service
Submitted in CG Docket 03-123**



Public Access to TRS Information and Outreach

In its Further Notice of Proposed Rulemaking (Second Improved TRS Report and Order, CC Docket No. 98-67, FCC 03-112, (CG Docket No. 03-123), adopted May 15, 2003, the FCC asked for comments on the public's access to information and outreach concerning TRS. The Commission expressed concerns over its current rules, rules that may not be fully effective in educating the public on the availability and purpose of TRS. The FCC requested information on the current rate of hang-ups on TRS calls, the effectiveness of current outreach efforts, the availability of state programs to serve as models for a national program, and what types of additional outreach requirements should be required for TRS providers and states.

The TRS Working Group of the Consumer Advisory Committee met twice in 2003 to discuss the Commission's request for recommendations. At the November 20, 2003, meeting of the Consumer Advisory Committee, the following recommendations of the TRS Working Group were adopted and are hereby submitted to the Commission in the form of comments in Docket CG 03-123.

The Committee has understood that no state or relay provider formally tracks the number of hang-ups for TRS calls; however, anecdotal information from relay centers and state administrators indicate a rate of up to 10% of outbound calls result in hang-ups by hearing parties. The Committee believed the majority of these hang-ups are from a lack of understanding of the service. Current efforts for educating the public on TRS were not considered effective. It was reported many people still associate a relay service call with a telemarketing-type call. While several states reported they currently provide a formalized outreach program, the programs are "branded" to an individual state or a specific relay provider.

Others suggested TRS information appearing in the front of local telephone directories was the most common form of outreach in many states. However, this information needs to be standardized and be made more understandable. The Committee agreed that only through a coordinated information and outreach program can we achieve a "national consciousness" on the use and benefits of TRS.

FCC's Authority/Jurisdiction for a TRS National Outreach Campaign

The Committee believes that the FCC has authority/jurisdiction to conduct a national TRS outreach campaign. Here is a rundown of legislative and regulatory action that define the FCC's authority and jurisdiction to regulate and monitor Telecommunications Relay Services (TRS):

Section 225 of the Communications Act of 1934 as amended in 1990 (via the Americans with Disabilities Act) directs the Commission to ensure that telecommunications relay services (TRS) "are available, to the extent possible and in the most efficient manner," to individuals with hearing and speech disabilities in the United States.¹ The provision further requires that TRS facilitate the ability of individuals with hearing or speech disabilities to communicate over the telecommunications network in a manner that is "functionally equivalent" to the ability of individuals who do not have such disabilities.² In its 1990 Report on the Americans with Disabilities Act, the House of Representatives noted that: "...By imposing a requirement that every common carrier provide TRS, directly, collectively or through third-party contractors, Congress intended to "bridge the gap between the communications-impaired telephone user and the community at large," and noted that: "to participate actively in society, one must have the ability to call friends, family, businesses and employers."³

The FCC has a very broad ancillary jurisdiction as contained in Section 4(i) of the Communications Act of 1934. That section reads as follows: "The Commission may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions."⁴ The courts have generally held that this authority is very broad. The Commission has a comprehensive mandate to regulate interstate (and in the case of Section 225, intrastate) communications by wire or radio, with "not niggardly but expansive powers."⁵

There are many court cases interpreting the FCC's ancillary jurisdiction quite expansively. For example, in 1985, the Seventh Circuit has held that the FCC had authority pursuant to Section 4(i) to require the Bell Operating Companies to submit capitalization plans for their separate affiliates that would sell or lease terminal

¹ 47 U.S.C. § 225(b)(1).

² 47 U.S.C. § 225(a)(3).

³ H.R. Rep. No. 485, Pt. 2, 101st Cong., 2d Sess. 129 (1990) (House Report); *see also, In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-67, FCC 00-56, 15 FCC Rcd 5140, ¶ 105 (2000) (*Improved TRS Order & FNPRM*)

⁴ 47 U.S.C. § 154(i).

⁵ *National Broadcasting Co. v. United States*, 319 U.S. 190, 219 (1943)

equipment to the Commission for prior approval even though the FCC had no comprehensive authority to regulate holding companies that controlled the Bell Operating Companies.⁶ In 1988, the D.C. Circuit also approved the Commission's exercise of its Section 4(i) authority to require AT&T and the Bell Operating Companies to reimburse customers for the carriers' 1978 earnings that exceeded the FCC's profit ceiling for those carriers even though the FCC had not suspended and investigated those rates or imposed an accounting order as contemplated by Section 204 of the 1934 Act.⁷

The FCC has, on many occasions, been involved with customer education or outreach programs to one extent or another. For example, in 1992 the Commission decided that AT&T should not be permitted to receive all calling card calls dialed from payphones on a 0+ basis and devised a regulatory plan that permitted coin phone subscribers to select the a long distance carrier or operator services provider of choice (*i.e.*, coin phone presubscription). As a result, the Commission directed AT&T to "educate its cardholders to check payphone notices and to use 0+ access only at public phones identified as presubscribed to AT&T."⁸ In 1996, wireless carriers were also directed by the FCC to engage in a significant consumer education process with the rollout of wireless enhanced 911 services.⁹ In July 1990, the FCC released a public notice that encouraged "carriers serving the interstate and/or international markets to participate voluntarily in a consumer education program designed to familiarize the public with ways to access service providers."¹⁰

Since the FCC has statutory authority to direct carriers to engage in a customer outreach program, it also has authority to direct that such program be funded from TRS contributions from carriers and their customers. The FCC previously determined that TRS should be funded on a shared basis among carriers because it determined that self-funding of TRS by carriers "would provide incentives for carriers to handle fewer relay calls, to degrade relay calling quality, to migrate relay customers to other carriers, and to

⁶ *North American Telecommunications Assoc. v. FCC*, 772 F.2d 1282, 1290-1292 (7th Cir. 1985).

⁷ *New England Telephone & Telegraph v. FCC*, 826 F.2d 1101, 1107 (D.C. Cir. 1988).

⁸ *Billed Party Preference for 0+ InterLATA Calls*, CC Docket No. 92-77, Phase I, Report and Order and Request for Supplemental Comment, FCC 92-465 (Oct. 8, 1992).

⁹ *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, RM-8143, Report and Order and Further Notice of Proposed Rulemaking, FCC 96-264, 11 FCC Rcd. 18676 (July 26, 1996).

¹⁰ *See Annual 1990 Access Tariff Filings*, CC Docket No. 90-320, Memorandum Opinion and Order, DA 90-845, 5 FCC Rcd. 4177, ¶ 292 (1990).

restrict relay only to their presubscribed customers.”¹¹ Given the reasoning behind the FCC’s decision to fund TRS on a shared-contribution basis, it would be equally reasonable for the FCC to determine that were it to direct carriers to self-fund TRS outreach, those efforts would likely be less-than-effective.

Process & Mechanism for TRS National Outreach Campaign

The Committee recommends that the TRS national outreach campaign be funded by monies approved by the FCC in whatever capacity it deems appropriate whether that be the Interstate TRS Fund or another mechanism within the realm of responsibility of the FCC. The collection of revenue percentages would be made from the common carriers by the TRS Fund Administrator similar to currently performed for handling of long distance calls via traditional TRS, as well as both interstate and intrastate calls via VRS and Internet Relay or budgeted for by the FCC. However, the Committee believes that a new advisory board should be established, to operate under the chosen funding mechanism, which will advise the FCC on a national outreach campaign and direct the outreach payments to an approved professional outreach firm. The Committee suggests that an RFP be developed by the new advisory board to obtain the services of an outreach firm that would work under the direction of the board. If this plan is adopted, there would be two separate Advisory Boards, one on collection and disbursement of funds for TRS interstate calls, and another on outreach.

The Committee recommends that the FCC enlist support and involvement of its TRS Working Group in the selection process for membership of the Interstate TRS Fund Advisory Board – Outreach. The Committee members would solicit and review resumes/letters of interest from individuals/representatives that seek to represent various stakeholder groups on the Interstate TRS Fund Advisory Board – Outreach. The Committee would then select and interview a number of qualified applicants for this Board, and propose its 16 selections to the FCC for approval. The Committee recommends that membership of the Board consist of 10 consumers (of which two are deaf, two hard of hearing, two hearing, one speech-disabled, one late-deafened, one CODA (a child of deaf adults), and one deaf-blind), two representatives from the TRS industry, two representatives from the National Association of State Relay Administrators, one representative of a national exchange carriers association, and one representative of a local exchange carriers association. The Committee asks that priority be given to applicants who possess some competency in marketing/outreach on TRS and/or other comparable topics, as well as identifying at least one potential member that has not utilized TRS services in recent years. And to allow for diversity of representation and exchange of different perspectives on outreach activities and objectives, there be a rotation of membership every two years with each of the stakeholder groups.

¹¹ *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571, Order on Reconsideration, Second Report and Order, and Further Notice of Proposed Rulemaking, FCC 93-104, 8 FCC Rcd. 1802 (Feb. 25, 1993).

The Committee recommends that as soon as there is a selection made of an entity to be the TRS Fund Administrator or a new Fund Administrator, arrangements be made immediately to disseminate a request for proposal, to review applications, and to select a marketing/public relations firm to guide the Fund Administrator and members of the Advisory Board – Outreach for a number of years in planning for, and implementation of the TRS outreach activities under the Fund.

TRS Call Centers To Be Designated for Top Priority Restoration

The Committee believes that the TRS call centers should be designated as among key telecommunications facilities in America to receive top priority restoration in event of a weather disaster/an act of terrorism.

Video Relay Service (VRS)

Video Relay Service (VRS) presents a host of issues that are very different from issues presented by telecommunications relay services (TRS). In 1990, a national forum was held in the nation's capital to work through many of the issues that were about to confront TRS providers, consumers, and the FCC. No similar forum has ever been held on VRS.

The Committee recommends that the FCC host an Open National VRS Forum in the Spring of 2004. The forum would be designed to provide an opportunity for comment from and dialogue among telecommunications companies, VRS providers, consumers, interpreters, and federal and state governmental representatives. The purpose would be to have an interactive discussion on a number of topics including:

The future of VRS, and its role as a functionally equivalent alternative to conventional telephone service. Included within this discussion will be goals for VRS service with respect to hours, speed of answer, quality, research and development, etc.

How VRS differs from TRS and the ramifications for consumers and providers. Included within this discussion will be practices for call set up, and the handling of certain types of calls, including harassing, lewd, non-shared language, and legal interpreting calls.

Ways to address interpreter skill levels and the physical impact of handling VRS calls.
The best means of funding VRS now and in the future – should this remain a service exclusively funded through the Interstate relay fund, or should states share the burden?
The technology used (reliance on IP vs. PSTN) and how that affects FCC minimum standards – should certain waivers be permanently granted?
The need for outreach and education about VRS – how should this be handled?

The mission of the Consumer Advisory Committee is to make recommendations to the Commission regarding consumer issues within the jurisdiction of the Commission and to facilitate the participation of consumers (including people with disabilities and underserved populations, such as Native Americans and persons living in rural areas) in proceedings before the Commission.

Adopted: November 20, 2003

Respectfully submitted,
Shirley L. Rooker
Chairperson
Consumer Advisory Committee